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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 786

Sociedad de Mario Mercado e Hijos, Appellants

v.

Commonwealth of Puerto Rico, etc., Appellee

Appeal From the Supreme Court of Puerto Rico

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

COMMONWEALTH OF PUERTO RICO, ETC., *Plaintiff-Appellee*

v.

SOCIEDAD MARIO MERCADO E HIJOS, *Defendants-Appellants*

CONDEMNATION PROCEEDINGS

Appeal From the Supreme Court of Puerto Rico

JURISDICTIONAL STATEMENT

TO THE HONORABLE COURT:

This case involves an appeal from the decision and opinion of the Supreme Court of the Commonwealth of Puerto Rico in the case of Commonwealth of Puerto Rico, et als. v. Sociedad Mario Mercado e Hijos, case number 64-24 not yet reported in the official reports of the said court.

The jurisdiction of this Honorable Court is invoked under the provisions of section 1258, paragraph 2, Title 28 U.S.C.A. This is an appeal from a judgment entered in con-

demnation proceedings in which the constitutionality of Law No. 99 of April 18, 1952 (Laws of Puerto Rico Annotated, Vol. 23, sec. 278 (g) and (n); Appendix hereto, Exhibit 1, p. 1a) which authorizes the condemnation of private property by the governor of Puerto Rico on behalf of the Puerto Rico Industrial Development Company to be sold or leased to private individuals for the purpose of establishing factories (tax exempted) on such properties, is assailed as repugnant to the Constitution of the United States of America, and the proceedings conducted in the case.

In this case, the Commonwealth of Puerto Rico condemned 70.8397 cuerdas of land on behalf of the Puerto Rico Industrial Development Company in 1959 of which, 68.3353 cuerdas were the property of defendant-appellant herein. The Commonwealth government deposited with the Clerk of the Court the sum of $121,827.40. This land was to be used by the Puerto Rico Industrial Development Company as an industrial site for tax exempted plants. The government filed a motion for immediate possession and acquisition which was granted by the Court of Eminent Domain by order dated September 11, 1959.

Appellant herein raised several constitutional issues under the Federal constitution in the trial court (Typewritten record on Appeal, pages 15-18; Appendix, Exhibit A, p. 5a) alleging that the proposed use was not a public one, as it is contemplated in the Constitution of the United States of America, and that the selection of the land condemned was done arbitrarily. It was also alleged that the amount deposited did not constitute the fair and just compensation contemplated in the Constitutions of the United States and the Commonwealth of Puerto Rico.

Appellant operates a sugar factory in the town of Guayanilla, Puerto Rico under the name of Central Rufina and is the owner and cultivates land in the southern part of Puerto Rico on which it raises its raw material (sugar

cane). The land condemned was dedicated totally to the production of this raw material. The appellant claimed before the trial court and states before this Honorable Court, that to deprive it of land where it raises its raw material for its factory and to give this land to private individuals for their own private use, is not constitutionally valid and is a clear abuse of the right to condemn private property.

The Constitutional issues were disposed of by the Court of Eminent Domain (Superior Court of Puerto Rico) by order of March 23, 1960 signed by P. Santos Borges, Judge. (Typewritten Record on Appeal, page 42; Appendix, Exhibit B, p. 8a).

Defendant-appellant filed an answer to the complaint dated April 16, 1960 in which, among other defenses, it stated that the compensation deposited did not constitute fair and reasonable compensation under the law. As special defenses it raised the following:

(1) The use was not a public use as contemplated in the Fifth Amendment to the United States Constitution.

(2) The use of the power to condemn to deprive an established industry of land where it raised its raw material for the purpose of delivering the said land to private enterprises is an illegal and unconstitutional exercise of that power.

(3) The determination and selection of the land to be condemned was arbitrary and prejudicial.

(4) The order of the court depriving defendant of its property prior to the determination of the fair and reasonable compensation was void as it violated the provisions of the U. S. Constitution and the Constitution of the Commonwealth of Puerto Rico. (Appendix, Exhibit C, p. 11a).

On March 17, 1961 defendant filed an amended answer to the complaint in which it raised the following defenses:

(1) Neither the statutory provisions cited in paragraph 1 of the complaint nor any other statutes of the Commonwealth of Puerto Rico authorize this expropriation.

(2) The statutes cited in paragraph 1 of the complaint as applied to this land and this defendant in this proceedings deprive defendant of property without due process of law in violation of Article II, Section 7 of the Constitution of Puerto Rico and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that this expropriation is not for a public purpose.

(3) The expropriation in this case of this particular tract of land is arbitrary, capricious, unreasonable and irrational and thus deprives defendant of its property without due process of law in violation of article II, section 7 of the Constitution of Puerto Rico and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

(4) The expropriation in this case constitutes a taking of private property for a non-public use in violation of article II, section 9 of the Constitution of Puerto Rico and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

(5) Law number 99 of April 18, 1952, contains insufficient standards to guide the administrative exercise of the power to acquire land by expropriation and thus constitutes an unlawful delegation of legislative power in violation of article III, section 1 of the Constitution of Puerto Rico.

(6) So much of Law Number 99 of April 18, 1952, as authorizes expropriations of property by or on be-

half of the Puerto Rico Industrial Development Company is unconstitutionally vague, and thus its application to this land and this defendant deprives defendant of property without due process of law in violation of article II, section 7 of the Constitution of Puerto Rico and in violation of the Fifth and Fourteenth amendments to the Constitution of the United States.

(7) The land expropriated in this case is an integral part of a larger tract of land owned by the defendant devoted to agriculture and industrial use. This expropriation has caused damage to defendants remaining land and to the agricultural, commercial and industrial enterprise connected therewith.

Copy of said amended answer is attached to this Statement in the Appendix as Exhibit DD (p. 16a).

Prior to the hearing of the case on the merits, defendant-appellant submitted an interrogatory upon plaintiff under the Rules of Civil Procedure of Puerto Rico (Appendix, Exhibit E, p. 19a), to which plaintiff raised several objections (Appendix, Exhibit F, p. 21a) that were sustained by the Court of Eminent Domain. The questions were directed to discover evidence as to the alleged arbitrary selection of the land. Upon Writ of Certiorari to the Supreme Court of Puerto Rico (Appendix, Exhibit G, p. 26a), that court by order issued July 14, 1961 (Appendix, Exhibit H, p. 31a), ordered Plaintiff to answer certain questions but sustained the objections related to the arbitrary selection of the land, holding that it is not for the courts . . . to sort and choose among the various parcels selected for condemnation and that the rights of property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of taking. The court held that this case concerned "a condemnation undertaken by a public agency for obvious public purposes, that is, for industrial development." It based this affirmation on a previous case decided by it, *Common-*

wealth v. *Fajardo Sugar Co.*, 79 P.R.R. 303 (1956), and *People* v. *Eastern Sugar Associates*, 156 F. 2d 316 (C.C.A. 1, 1946), cert. denied in 329 U.S. 772.

The court further stated that defendant-appellant was in estoppel to raise the said defense, since it had withdrawn the amount deposited by the State, and that the acceptance of the said sum precluded defendant from arguing any other issue which does not relate exclusively to the amount of the compensation. The court in so ruling, accepted as established, facts not present in the case, because the "motion for withdrawal of funds" (Appendix, Exhibit D, p. 14a) very clearly states in its paragraph 2, "that defendant wishes to withdraw the aforesaid sum without prejudice to its allegations in this case." The Court overlooked the contents of the motion and the fact that defendant had been already deprived of the use and benefit of the property by the order of the Court of Eminent Domain transfering immediate title and possession to plaintiff.

Defendant moved for reconsideration of the said order on May 11, 1962 (Appendix, Exhibit J, p. 39a), stating that the situation in this case was not similar to the facts of *Berman* v. *Parker*, 348 U.S. 26 and that the court had power to set aside the selection when the officials had acted in a capricious manner as had been proved in this case. *United States* v. *Carmack*, 329 U.S. 230, 67 S. Ct. 252; *United States* v. *Willis*, 211 F. 2d 1, and *United States* v. *Certain Real Estate, etc.*, 217 F. 2d 920. The motion was denied by Order dated May 29, 1962. (Appendix, Exhibit K, p. 41a).

The case came up for hearing on January 31, 1963 and the case extended throughout February 1, 26, 27 and 28 and March 1, May 13, 14, 15 and 16. The Court of Eminent Domain entered judgment on September 11, 1963 and in a long opinion determined that the best use of the condemned land at the time of the condemnation "was agricultural, but

with an increased value for these purposes in view of the possibility that within a reasonable period of time it could be dedicated to industrial or residential development purposes." The Court then proceeded to dismiss the allegations of value made by defendant-appellant $409,250.00 as against the $121,827.40 deposited by the Plaintiff. The Court did not determine the value of the condemned property at all. It is presumed in the judgment that the amount deposited could be the amount adjudged. Copy of the Findings of Facts, Conclusions of Law and Judgment of the Superior Court of Puerto Rico, Eminent Domain Section, is attached herewith in the Appendix as Exhibit L, pp. 42a-60a), and is also found in the Typewritten Record on Appeal at pages 86-109.

Defendant appealed to the Supreme Court of Puerto Rico on October 3, 1963 by filing its Notice of Appeal (Appendix, Exhibit M, p. 61a) and in the said Notice of Appeal raised the following question of law:

> (1) The judgment deprived appellant of its property without due process of law.
>
> (2) The court in determining that the best use was "agricultural" did so against the evidence introduced, without any basis therefore in the record, in an arbitrary and capricious manner thus depriving appellant of a fair and impartial trial under both the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico.
>
> (3) The court in disbelieving appellant's evidence without justification denied it the due process of law and deprived it of its property in violation of the Federal Constitution and the Constitution of the Commonwealth of Puerto Rico.
>
> (4) The condemnation in this case does not constitute a public use as contemplated in the Fifth Amendment to the Constitution of the United States of

America incorporated in the Fourteenth Amendment of that same Constitution.

(5) The use of the power of condemnation to deprive an established industry of its source of raw material in order to later deliver the lands in question to private enterprises for the operation of industrial establishments, is an unlawful exercise of the power of condemnation and the action of the Industrial Development Company constitutes a violation of the restriction included in the Act authorizing it to expropriate.

The Supreme Court of Puerto Rico, on May 13, 1965 entered judgment affirming the judgment of the Court of Eminent Domain (Typewritten Record on Appeal, pages 112-113; Appendix, Exhibit N, p. 63a). The court decided that the first three errors had been adversely decided against defendant-appellant in the Certiorari filed previously (Appendix, Exhibit G, p. 26a), and the court again made reference to the fact that the funds deposited had been withdrawn by appellant, and that therefore, appellant could not raise the issue of the illegality of the taking.

As to the other two errors assigned to the Court of Eminent Domain, the Supreme Court of Puerto Rico affirmed the determination of "agricultural" use made by that court, but made no ruling as to the fourth and fifth assignments of errors pointed out in the Notice of Appeal, that is, the use of the power to condemn in this case for a use not public and the use of that power to deprive an established industry of its source of raw material and give that land to another private enterprise for its own private use.

The judgment entered by the Supreme Court failed to decide the issues in the order and manner presented to that court. In so doing, the Supreme Court deprived appellant of its right to a fair and impartial appraisal of its case.

A motion for reconsideration filed on May 24, 1965 was denied by the Supreme Court of Puerto Rico on May 27, 1965.

Appellant filed its Notice of Appeal to this Supreme Court of the United States with the Clerk of the Supreme Court of Puerto Rico on June 4, 1965 stating in the said Notice of Appeal the grounds for the same. (Appendix, Exhibit O, p. 66a).

The Supreme Court of Puerto Rico by order of June 11, 1965 (Appendix, Exhibit P, p. 71a) considering the Notice of Appeal filed, recalled from the trial court the original record for the preparation of the record on appeal and granted appellant by order dated September 30, 1965, till November 1, 1965 to file the record on appeal before this Honorable Court (Appendix, Exhibit Q, p. 71a).

In this case sufficient constitutional issues under the Constitution of the United States and the Constitution of the Commonwealth of the Puerto Rico were raised at the trial court and before the Supreme Court of Puerto Rico and are raised in this Statement to give jurisdiction to this Honorable Court. *Phillips Chemical Co.* v. *Dumas Independent School District* (Tex. 1960), 80 S. Ct. 474; 361 U.S. 376, 4 L. Ed. 383; *Brown Shoe Co.* v. *U. S.* (Mo. 1962), 82 S. Ct. 1502; 370 U.S. 294, 8 L. Ed. 2d 510; *Braniff Airways* v. *Nebraska State Bd. of Equalization and Assessment*, 74 S. Ct. 757; 347 U.S. 590, 98 L. Ed. 970.

WHEREFORE, it is prayed from this Honorable Court to review the judgment of the Supreme Court of Puerto Rico in this case.

Ponce, Puerto Rico, this 30th day of November, 1965.

Respectfully submitted,

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